IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

Crl.MC.No. 136 of 2007()

C.P.20 OF 2006 OF J.F.CM-I, KANNUR

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PETITIONER: ACCUSED:

SANDEEP P.V., S/O.PURUSHOTHAMAN,
AGED 35 YEARS, SIMPLE, PODIKKUNDU, KANNUR.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY S.I. OF POLICE,
KANNUR TOWN POLICE STATION, KANNUR.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

.R.BASANT, J

Crl.M.C.No.136 of 2007

Dated this the 16th day of January, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 376 I.P.C. The learned Magistrate has issued process to the petitioner on the basis of a final report submitted by the police alleging that he had committed rape on the prosecutrix.

2. The petitioner has not appeared before the learned Magistrate. He has not been arrested in the course of investigation. The petitioner has rushed to this Court with this petition with a request that powers under Section 482 Cr.P.C may be invoked to quash the proceedings and save undeserved vexation and traumA for the petitioner.

3. What are the reasons ? The learned counsel for the petitioner has taken me through the averments in the F.I statement as also the allegations raised in the final report. The allegation of rape is inherently improbable and it is convincingly revealed from the materials available that it was at any rate only consensual sexual inter course and not a case of rape at all, submits the learned counsel for the petitioner. The learned counsel for the petitioner submits that the petitioner who has not been arrested so far, is likely to be arrested and detained in prison for the short reason that the offence

punishable under Section 376 I.P.C is one triable exclusively by the Court of Sessions. To avoid needless harassment to the petitioner, the proceedings may be quashed, it is submitted.

4. The counsel has strained to bring to the notice of the Court the various aspects which according to him would suggest that the version of the prosecutrix that she was forced and compelled to have sexual intercourse with the petitioner without her consent and her will is unjustifiable. It is too early for this Court to hazard an opinion on the acceptability of the version advanced by the prosecutrix. It is certainly for the court concerned to consider whether the petitioner is entitled for discharge/acquittal on the allegations raised.

5. I am not in these circumstances persuaded to invoke the powers under Section 482 Cr.P.C. But If find merit in the submission of the learned counsel for the petitioner that invoking the powers under Section 482 Cr.P.C, directions under Section 438 Cr.P.C deserve to be issued in favour of the petitioner.

6. I am satisfied, in these circumstances, that the main prayer in this Crl.M.C that the proceedings may be quashed can be rejected. But at the same time, directions under Section 438 Cr.P.C can be issued in favour of the petitioner in the interests of justice.

7. In the result, this Crl.M.C is, admitted in part. The following directions are issued in the peculiar facts and circumstances of this case invoking the powers under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate on 12.02.2007;

ii) The petitioner shall be released on bail if he executes a bond for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

iii) The petitioner shall make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

8. Hand over a copy of this order to the learned counsel for the petitioner forthwith.

(R.BASANT, JUDGE)

rtr/-